

**BAKER & HOSTETLER LLP**

45 Rockefeller Plaza  
New York, New York 10111  
Telephone: (212) 589-4200  
Facsimile: (212) 589-4201  
David J. Sheehan  
Oren J. Warshavsky

*Attorneys for Irving H. Picard, Trustee  
for the Substantively Consolidated SIPA Liquidation  
of Bernard L. Madoff Investment Securities LLC and  
the Estate of Bernard L. Madoff*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION  
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the  
Substantively Consolidated SIPA Liquidation of  
Bernard L. Madoff Investment Securities LLC and  
the Estate of Bernard L. Madoff,

Plaintiff,

v.

UBS AG, *et al.*

Defendants.

No. 08-01789 (SMB)

SIPA LIQUIDATION

(Substantively Consolidated)

Adv. Pro. No. 10-05311 (SMB)

## **APPLICATION FOR THE ISSUANCE OF LETTERS OF REQUEST**

1. Plaintiff Irving H. Picard, as trustee (“Trustee”) for the liquidation of the business of Bernard L. Madoff Investment Securities LLC (“BLMIS”) under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa *et seq.* (“SIPA”) substantively consolidated with the estate of Bernard L. Madoff, individually, through his attorneys, Baker & Hostetler LLP, submits this application for the issuance of letters of request to the applicable central authority of Luxembourg for the service of document requests upon UBS Europe SE, Luxembourg Branch; UBS Fund Services (Luxembourg) S.A., and UBS Third Party Management Company S.A. (“Letters of Request”).

2. This application is made pursuant to this Court’s inherent authority; 28 U.S.C. § 1781(b)(2); the Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters (the “Hague Evidence Convention” or “Convention”),<sup>1</sup> to which the United States and Luxembourg are signatories; and in light of the comity between the United States and Luxembourg.

3. This application is made in accordance with the Stipulation and Order Authorizing International Discovery entered on May 18, 2016, which authorizes the parties “to conduct document discovery in connection with the Actions under the Hague Convention or through any other internationally recognized means of obtaining cross-border discovery, including but not limited to, letters rogatory.” *See* Stipulation and Order Authorizing International Disc., May 18, 2016, ECF No. 238 (the “International Discovery Stipulated Order”).

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<sup>1</sup> *See* Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, Mar. 18, 1970, 23 U.S.T. 2555, 847 U.N.T.S. 231.

4. The International Discovery Stipulated Order was signed by UBS (Luxembourg) S.A., now UBS Europe SE, Luxembourg Branch;<sup>2</sup> UBS Fund Services (Luxembourg) S.A.; and UBS Third Party Management Company S.A. (collectively, the “Luxembourg Entities”).

## BACKGROUND

### Madoff’s Ponzi Scheme and the Trustee’s Allegations

5. Bernard L. Madoff (“Madoff”), through the investment advisory business of BLMIS, conducted a decades-long Ponzi scheme of breathtaking scale. *See* Complaint, *Picard v. UBS AG, et al.*, Adv. Pro. No. 10-Civ-05311 (S.D.N.Y. December 7, 2010) (“Complaint”).

6. His fraud was sustained by capital infusions from around the globe. In particular, domestic and foreign investment vehicles colloquially known as “feeder funds” injected several billions of dollars into his scheme. *Id.*

7. Included among these feeder funds were Luxembourg Investment Fund (“LIF”), including LIF’s sub-fund Luxembourg Investment Fund – U.S. Equity Plus (“LIF-USEP”). *Id.* LIF-USEP was a sub-fund of LIF formed for the exclusive purpose of investing with BLMIS. LIF-USEP’s BLMIS account was opened under the name “UBS (Luxembourg) S.A. [now UBS Europe SE, Luxembourg Branch] for the benefit of Luxembourg Investment Fund U.S. Equity Plus.”

8. LIF withdrew approximately \$500 million from BLMIS. *Id.* These withdrawn funds comprise customer property and constitute avoidable transfers that the Trustee seeks to recover for equitable distribution. (*Id.* ¶ 190).

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<sup>2</sup> **UBS Europe SE, Luxembourg Branch** is a branch of **UBS Europe SE**, a *Societas Europaea*, incorporated in Germany. **UBS Europe SE, Luxembourg Branch** formerly operated as UBS (Luxembourg) S.A. After merging with and absorbing UBS (Luxembourg) S.A. on December 1, 2016, UBS Europe SE now carries out UBS (Luxembourg) S.A.’s business operations through its Luxembourg Branch.

9. This action focuses, in part, on LIF and the network of associated individuals and entities, which was integral to perpetuating Madoff's Ponzi scheme. LIF had highly sophisticated service providers, including UBS AG, UBS (Luxembourg) S.A. (now UBS Europe SE, Luxembourg Branch), UBS Fund Services (Luxembourg) S.A., and UBS Third Party Management Company S.A. (collectively, "UBS"), as well as M&B Capital Advisers Sociedad de Valores S.A. and its affiliated entities ("M&B") and Reliance International Research LLC and its affiliated entities ("Reliance").

10. On November 22, 2016, this Court issued a decision dismissing the Trustee's subsequent transferee claims against foreign defendants, including UBS, based on the reasoning that section 550 of the Bankruptcy Code does not apply extraterritorially to the recovery of subsequent transfers that took place outside the United States (the "Extraterritoriality Decision"). Memorandum Decision Regarding Claims to Recover Foreign Subsequent Transfers of the Bankruptcy Court (Bernstein, J.), *Sec. Inv. Prot. Corp. vs. Bernard L. Madoff Inv. Sec. LLC (In re BLMIS)*, Adv. Pro. No. 08-01789 (SMB) (Bankr. S.D.N.Y. Nov. 22, 2016), ECF No. 14495.

11. Despite their dismissal from the proceeding, UBS's awareness of the Ponzi scheme remains central to the Trustee's claims against LIF and the domestic subsequent transferee defendants that remain in the action.

12. The Trustee alleges that UBS, coordinated closely with M&B and Reliance to establish and operate LIF. Through researching BLMIS, working with BLMIS, and by creating, managing and controlling LIF-USEP, which invested 100% of its assets with BLMIS—UBS obtained knowledge of Madoff's fraud. And as agents of LIF, UBS's knowledge is imputed to LIF.

13. LIF's board was populated with UBS directors and officers. (Complaint ¶ 55). Executives of UBS (Luxembourg) S.A. (now UBS Europe SE, Luxembourg Branch) signed the BLMIS agreements to open LIF's BLMIS account. Through UBS AG and UBS (Luxembourg) S.A., LIF's co-sponsors, UBS, one of the world's leading financial institutions, lent its name and reputation to LIF in order to gain the trust of the investing public. (*Id.* ¶¶ 95-101) UBS helped to secure the necessary approvals from the Commission de Surveillance du Secteur Financier ("CSSF"), the Luxembourg regulator, to give LIF the false appearance of being UCITS-compliant. (*Id.*) And UBS communicated regularly with BLMIS. (*Id.* ¶ 64).

14. Through UBS AG and UBS (Luxembourg) S.A., LIF's co-sponsors, UBS, one of the world's leading financial institutions, lent its name and reputation to LIF in order to gain the trust of the investing public. UBS helped to secure the necessary approvals from the Commission de Surveillance du Secteur Financier ("CSSF"), the Luxembourg regulator, to give LIF the false appearance of being UCITS-compliant.<sup>3</sup> (*Id.* ¶¶ 97-112).

15. UBS concealed Madoff's involvement with LIF from the CSSF, knowingly omitting any reference to Madoff or BLMIS when identifying LIF's custodians and managers. This allowed M&B to leverage the UBS brand name to market the fund to wealthy investors. (*Id.*).

16. UBS, together with M&B and Reliance, enabled the BLMIS Ponzi scheme through LIF. Although they had evidence strongly indicating that BLMIS was engaged in fraud, UBS continued to facilitate the investment of hundreds of millions of dollars with BLMIS, and profited for their efforts.

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<sup>3</sup> A UCITS fund – an acronym for "Undertakings for Collective Investments in Transferable Securities" – is organized under a set of European Union ("EU") directives that aim to allow collective investment schemes to operate freely throughout the EU on the basis of a single authorization from one member state.

17. The Complaint seeks, *inter alia*, to avoid and recover approximately \$500 million in fraudulent transfers made to LIF under the Bankruptcy Code, the New York Debtor Creditor Law, and SIPA, particularly § 78fff-2(c)(3).

**The Luxembourg Entities' Official Roles with Respect to LIF**

18. UBS (Luxembourg) S.A. (now UBS Europe SE, Luxembourg Branch) was LIF's official custodian and was responsible for safeguarding the fund's assets. (Complaint ¶¶ 100-101). UBS (Luxembourg) S.A. delegated its custodial duties to BLMIS, entering into a sub-custodian agreement in connection with LIF. (*Id.* ¶ 109). UBS (Luxembourg) S.A. was also LIF's portfolio manager from December 2005 through November 2006. (*Id.* ¶ 100-101). UBS (Luxembourg) S.A. also delegated its management duties to BLMIS under Trading Authorization and Options agreements with BLMIS. (*Id.* ¶¶ 109-111, 188). These agreements were never disclosed to the CSSF, and these arrangements were not in accord with UCITS regulations as incorporated by Luxembourg law. (*Id.*)

19. UBS Fund Services (Luxembourg) S.A. was LIF's administrator, charged with, among other things, calculating LIF's net asset value ("NAV"). (*Id.* ¶ 103). That task required UBS Fund Services (Luxembourg) S.A. to verify daily trades. (*Id.*) The Trustee alleges that UBS Fund Services (Luxembourg) S.A.'s NAV calculations were based on fictitious, unverified information obtained from Madoff. (*Id.*)

20. UBS Third Party Management Company S.A. was LIF's portfolio manager from August 2006 through December 2008. (*Id.* ¶ 102). Management of LIF's portfolio was also delegated to BLMIS, and that delegation was not disclosed to the CSSF. (*Id.* ¶¶ 102, 110).

21. The Luxembourg Entities' knowledge and documents are highly relevant to the prosecution of the Trustee's claims in this adversary proceeding. Moreover, each of the Luxembourg Entities consented to international discovery under the International Discovery Stipulated Order. (ECF No. 238).

22. For the above reasons, the Trustee believes that the Proposed Letters of Request are just and appropriate and respectfully requests that the Court issue such Letters of Request to the indicated Judicial Authority.

Dated: New York, New York  
February 21, 2018

Respectfully submitted,

/s/ Oren J. Warshavsky

**Baker & Hostetler LLP**

45 Rockefeller Plaza

New York, New York 10111

Telephone: (212) 589-4200

Facsimile: (212) 589-4201

David J. Sheehan

Email: dsheehan@bakerlaw.com

Oren J. Warshavsky

Email: owarshavsky@bakerlaw.com

*Attorneys for Irving H. Picard, Esq. Trustee  
for the Substantively Consolidated SIPA  
Liquidation of Bernard L. Madoff Investment  
Securities LLC and the Estate of Bernard L.  
Madoff*

To: Brett S. Moore  
Porzio Bromberg & Newman P.C.  
156 West 56<sup>th</sup> St., Suite 803  
New York, New York 10019

Mark J. Hyland  
Seward & Kissel LLP  
One Battery Park Plaza  
New York, New York 10004

Thomas J. Hall  
Norton Rose Fulbright  
1301 Avenue of the Americas  
New York, New York 10019